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Supreme Court, U.S.
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No. 96-79

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

SANDRA JEAN DALE BOGGS,

Petitioner,

v.

THOMAS F. BOGGS, HARRY M. BOGGS,
AND DAVID B. BOGGS,

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OPPOSITION OF HARRY M. BOGGS, AND DAVID B. BOGGS TO PETITION BY SANDRA JEAN DALE BOGGS FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

WHETHER REVIEW ON WRIT OF CERTIORARI IS APPROPRIATE WHERE:

1. The District Court did not hold any evidence to be inadmissable.

2. No real conflict exists with any decision of this Court or of other circuits.

3. The issue involved is whether in this particular case the evidence presented in opposition to the holding of the District Court and the Fifth Circuit Court of Appeal is sufficient to require the issuance of a Writ of Certiorari.

LIST OF PARTIES

1. SANDRA JEAN DALE BOGGS, Petitioner

   Represented by Livaudais & Livaudais

2. THOMAS F. BOGGS, Respondent

   In Proper Person

3. HARRY M. BOGGS AND DAVID B. BOGGS , Respondents

   Represented by Deano & Deano

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STATEMENT OF THE CASE

We have no problem with the statement of the case in petitioner's brief and as stated in the Reasons for Judgment of the District Court and the Opinion of the Fifth Circuit Court of Appeals.

We do however deny that there is a conflict between the holding of the Ninth Circuit in Ablamis v. Roper, 937 Federal Reporter 2nd 1450 and the holding of the Fifth Circuit in this matter because the causes of action are different. In Ablames, the Trustee of profit sharing trusts brought a declaratory judgment against the Executor of Glee Ann Ablamis. In the Boggs case all distribution of retirement funds have been paid to the employee and his designated beneficiary.

We have strong differences with the conclusion of petitioner in his Petition For Writ of Certiorari in that:

1. The entire ERISA law is directed toward employees and administrators of the retirement trusts in order to protect the interest of the employee. Nowhere is the entire act does it attempt to regulate ownership of retirement funds as between members of a family nor does the ERISA provisions attempt to control the ownership of the funds after receipt by the employee or his beneficiary as set out in the laws of the State of residence and/or domicile of the employee or his beneficiary.

2. In the appendix to the petitioner's petition is cited 29 USC 1132 - Civil Enforcement. This section sets out Persons empowered to bring a civil action. Nowhere in this section does the law mention an action by a beneficiary against a forced heir of the employee.

ARGUMENT

We believe that the District Court correctly stated the law in its foot note #1 on page 5 of the Reasons For Judgment quoted in petitioner's appendix to the Petition marked "A-1".

The District Court's Reasons For Judgment on page 6 states:

"In enacting ERISA, Congress declared that its policy was the protection of employees vis a vis their employers --- The Act does not display any particular interest in preserving maximum benefits to any particular beneficiary".

And on page 10 of the District Court's Reasons for Judgment is:

"Secondly, because Louisiana law provided Dorothy Boggs with an undivided interest in the retirement plans at the time the fund was established, which was well before ERISA was passed in 1974, allowing ERISA to preempt her estate created property right would violate the Fifth Amendment's prohibition against the government's taking private property without just compensation"--.

Further more we do not feel that we can speak or argue more forcefully than the holding of the Court of Appeals for the Fifth Circuit. On page A-21 of petitioner's petition the Court states:

"This Court concludes that, under the facts of the case, the Louisiana community property law is not sufficiently 'related to' an employee benefit plan to necessitate ERISA preemption. Nothing is sought from the plan or its fiduciary. No duty will be imposed on the plan or the administrator. Benefits will continue to be paid to the beneficiary in the manner provided in the plan. A spouse's accounting obligation under community property law affects 'employee benefit plans' in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan. 21 Our decision relates not to the plan but to the disposition of the

proceeds only after payment to the designated beneficiary. This is no greater effect than the state's garnishment laws. Mackey, 486 US 825 (1988)."

The holding of the Fifth Circuit failed to follow the reasoning of the Ablamis case for reasons stated on Page A-24, A-22 and A-23. We add that the Ablames case was brought about by a trustee of two profit sharing trusts seeking a declaratory judgment of the Court as to whom to pay the proceeds of the plans - the employee's stated beneficiary or the heirs of the first wife.

In our case the funds are being paid to the employee's designated beneficiary, so the administrator of our fund is following the holding of the Ablamis case. But here, we are seeking the following the law of Louisiana, not as it applies to the retirement or investment plan, but as the Louisiana laws of ownership of community property apply to the funds after they are received by the beneficiary.

We had previously objected to the removal of our case in the State Court to the Federal Court by objecting to the jurisdiction. Maybe that was the wrong term. Our position was brought about mainly by the holding of the Court in Metropolitan Life Insurance Co. v. Taylor, 481 US 58. This was an action between an employer and an employee. The original suit was filed in the State Court by the employee and General Motors the employer and Metropolitan the administrator of the trust fund removed the matter to the Federal Court. In this case the court held that because this was a suit by a beneficiary to recover benefits from a covered plan, it falls directly under Section 502 (a) (i) (b) of ERISA which provides an exclusive federal cause of action for resolution of such disputes. As such the action was governed

by Section 502 (a) i (b) because of its civil enforcement provision. The civil enforcement provision of ERISA are covered in 29 USC 1132. (a) allows a civil action be brought by:

(1) A participant or beneficiary - (A) for the relief provided for in subsection (c) or (B) to recover benefits due him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan. Subsection "C" deals with an administrator's refusal to supply sufficient information and the failure to provide annual reports in complete form.

In Metropolitan the Court held its exclusive jurisdiction only because the civil enforcement provision of ERISA. We cannot find any need for civil enforcement of ERISA in our case. All payments under the plans have been paid to petitioner and are still being paid to her. She nor the sons of Isaac Boggs, Jr. are opposed to the method of payment by the administrator of the retirement plan.

Judge King who was on the panel in the Fifth Circuit dissented in the original opinion. She later moved for an En Banc Hearing which was refused by the Court. From the refusal she wrote a 37 page dissent which has been filed by petitioner as a supplemental appendix.

After reading Judge King's dissent over four times and reading most of the cases cited we do not feel that the dissent brings anything new to this matter. Her conclusion is that the ERISA preemption is all inclusive. It differs from the holding of the majority which stated: "In other words, ERISA was not meant to consume everything in its path".

In two places she cites Meeks v. Tullis, 791 F. Supp. 154, 157 (WD La. 1992). The facts of the Meeks case are quite similar to the facts of our case. It was heard by a Magistrate who stated that the attorney for Meeks made no effort to justify their position except to quote from the dissent in the Ablamis case. The author of this brief called the attorney to ask why he did not make greater effort to establish his position and why he did not appeal. He stated that this client did not believe that it was worth the effort and did not desire to assume the cost of an appeal. We do not believe that the Meeks case should be considered by the Court especially in view of the Fifth Circuit's decision here.

For the above stated reasons respondents feel that there is no error in the holdings of the District Court or the Fifth Circuit Court of Appeals and no Writ of Certiorari should issue.

RESPECTFULLY SUBMITTED:

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